

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA08-849

DONALD A. CASTLEBERRY
APPELLANT

V.

CHARLES H. FOHN, M.D., ET AL.
APPELLEES

Opinion Delivered February 11, 2009

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT
[NO. CV-2006-067-6]

HONORABLE DAVID F. GUTHRIE,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

This is an appeal from the dismissal of a wrongful-death action based on medical malpractice on the grounds that the statute of limitation had run. Appellant argues that, because the cause of action for wrongful death did not accrue until the death, the trial court erred in ruling that the limitation period commenced on the date of the last allegedly negligent medical treatment. We affirm.

The decedent was treated by appellees until March 15, 2004. He died on March 24, 2004. On March 22, 2006, a complaint for wrongful death was filed against appellees alleging that the death resulted from their negligent medical treatment provided on and before March 15, 2004. The trial court ruled that the complaint was untimely and dismissed.

Appellant's position is clearly wrong. A wrongful-death action for medical malpractice accrues on the date of the negligent treatment, not on the date of the death therefrom. A medical-malpractice action must be brought "within two years after . . . the date of the

wrongful act complained of and no other time.” Ark. Code Ann. § 16-114-203(a) and (b) (Repl. 2006). The supreme court has expressly held that the applicable date for determining the statute of limitations for wrongful death caused by medical malpractice is the last day that medical treatment is provided. *Posey v. St. Bernard's Healthcare, Inc.*, 365 Ark. 154, 226 S.W.3d 757 (2006).

Affirmed.

HART and BROWN, JJ., agree.